**HIGH COURT OF UTTARAKHAND AT NAINITAL**

Writ Petition no. 454 of 2005 (SS)

Satya Bahar s/o Sri Tirath Singh
R/o Village & Post Libbarhedi, Tehsil Roorkee
District Haridwar ..... Petitioner

Versus

1. State of Uttarakhand
2. District Education Officer, Haridwar
3. Uttaranchal Secondary Education Service Board, Dehradun
4. Committee of Management, Raja Mahendra Pratap Prem Vidhyalay through its Manager.

..... Respondents

Sri A.K. Sharma, Advocate for the Petitioner
Standing Counsel for the respondents.

Dated: 1.3.2006

**Hon'ble Rajesh Tandon J.**

Hear Sri A.K. Sharma, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 17.5.2004 passed by the respondent no. 2.

Briefly stated the petitioner is working as Assistant Teacher in Raja Mahendra Pratap Prem Vidhyalya Gurukul Narsan, District Haridwar. The institution is grant-in-aid institute in provisions of U.P. High School and intermediate College (Payment of Salary to the Teachers and other Employees) Act, 1971 is fully applicable to the said institute. The

petitioner has submitted that four short term vacancies have occurred in the college and committee of Management has advertised them in the News Paper on 9.10.1996. The petitioner applied for the said vacancy and appeared before the selection committee and entire papers pertaining to the selection made by the selection committee were placed before the committee of management of the institution who accepted the recommendation made by the Selection Committee and resolved to appoint the petitioner as ad-hoc L.T. Grade Teacher in the Institution along with other candidates. The entire papers pertaining to the selection along with all the requisite documents were forwarded to the office of the District Inspector of Schools, Haridwar. The petitioner has submitted that he joined his duty as ad hoc L.T. Grade Teacher w.e.f. 1.11.1996 and since then continuously working as such but the respondents are not paying salary to the petitioner. The petitioner and three other persons had filed a writ petition No. 2049 of 1997 before the Allahabad High Court. The court decided the said writ petition on 17.1.1997 and directed the respondents to dispose of the representation of the petitioner within two months. The representation has not been decided by the respondents, therefore, the petitioner filed another writ petition No. 3126 of 2001 (SS), which was decided vide order dated 31.12.2003. The petitioner has submitted that the respondent no. 2 passed order on 17.5.2004 that the petitioner has not been appointed in conformity with the law, therefore, he will not be paid his salary.

Counter affidavit has been filed on behalf of the respondents. Against which rejoinder affidavit has also been filed. The respondents has taken a stand in their counter

affidavit that the present writ petition has been filed with the prayer of mandamus without challenging the order dated 17.5.2004 passed by the D.I.O.S. Haridwar and thus the writ petition is liable to be dismissed. Later on the petitioner with the permission of the Court suitably amended his writ petition and added relief of writ of certiorari quashing the order dated 17.5.2004.

I have gone through the order dated 17.5.2004 passed by respondent no.2 in compliance of the order dated 31.12.2003 passed by this Court in Writ Petition No. 3126 of 2001 (SS).

A perusal of the order dated 17.5.2004 passed by the District Education Officer, Haridwar shows that the respondent no.2 has not considered the findings arrived at by this Court on the basis of the principle of law laid down by various Courts.

Relying upon the judgment in Radha Raizada and other Vs. Committee of Management, Vidyawati Darbari Girls Inter College and others. It has been held in Shri Niwas Singh Vs. District Inspector of Schools, Ghazipur and others [(1998) 1UPLBEC 276] that for making adhoc appointment of the Teacher against short terms vacancies is required no penalty. The observations are quoted below:-

*"It is alleged that the permission was obtained from the District Inspector of Schools for advertising the post for appointment to the post of L.T grade teacher on short term vacancy and the District Inspector of Schools granted the permission, a copy of which has been annexed as Annexure-3 to the writ petition. The Committee of Management advertised the post in daily newspaper on 15th June, 1993. On the basis of the advertisement only two candidates applied. The committee of Management decided to readvertise the post, in*

*its resolution dated 25th July, 1993 and the Manager by his letter dated 6th September, 1993 requested the Employment Exchange to send the names. The post was re-advertised in the newspaper on 7th September, 1993. The petitioner applied for the appointment. The Selection Committee interviewed the candidates on 3rd October, 1993. The petitioner was found most suitable for appointment on the basis of guilty point marks. The Committee of Management accepted the recommendation of the Selection Committee and sent the papers to the District Inspector of Schools for approval on 13th October, 1993. The District Inspector of Schools did not pass any order.*

*The petitioner was given the appointment letter on 15th November, 1993 and in pursuance of the said appointment letter the petitioner joined the institution.*

*In Radho Raizada and others Vs. Committee of Management, Vidyawati Darbari Girls Inter College and others,(1994) 3 U.P.L.B.E.C 1551, the Full Bench has considered the procedure to be allowed for making ad hoc appointment of the teachers against short term vacancies. It was held that the procedure for notifying the short term vacancy should be the same as it is for the ad hoc appointment by District recruitment, under the first removal of Difficulties Order, viz to advertise the short term vacancy atleast in two newspaper having adequate circulation in Uttar Pradesh in addition to notifying the vacancy on the notice board of the Institution and also the application he invited from the local Employment Exchange. This decision was rendered on July 12, 1994. The advertisement is alleged to have been made on 15th June 1993 and 7-9-1993. There is no allegation that the daily newspaper*

*had no wide circulation in the district of Ballia where the school is situated. The decision of the Full bench is prospective in nature in respect of advertisement and does not invalidate any selection which otherwise is valid under law. It is not the case that the selection was made only on the basis of a notice published in the notice board of the school."*

In Meena Singh Vs. State of U.P and others [(1999) 1 UPLBEC 196] Allhabad High Court has held as under:

*"The petitioner had been appointed as a L.T. Grade teacher after advertising the post in well known newspapers, but the District Inspector of Schools has rejected the recommendation of the Committee of Management on the reasoning that the Committee of Management has no right to appoint teacher on a short term vacancy. In my opinion, this stand of the respondent is not correct. This Court is Sri Niwas Singh Vs. State of U.P. (1998) 1 UPLBEC 276, following the decision of the Full Bench in Radha Raizada Vs. Committee of Management can select the person as a teacher. Following the said decision this petition is allowed. The impugned order dated 6-4-98 is quashed and the District Inspector of Schools, is directed to pass afresh order in accordance with law within a month of the production of the certified copy of this order before him."*

It is the admitted case of the respondents that the petitioner was duly selected by the Selection Committee and he was recommended for appointment on ad hoc basis as L.T. Grade teacher. He has been working in the college since 1.11.1996 and as such he is entitled to get salary of the post on which he is working.

In view of above, a writ of certiorari is issued quashing the order dated 17.5.2004 passed by the respondent no.2. Respondent no. 2 directed to pass appropriate orders regarding payment of salary to the petitioner admissible to the L.T. Grade Teachers from 1.11.1996.

Accordingly, the writ petition is allowed. No order as to costs.

**Rajesh Tandon J.**

Dated: 1.3.2006
*Dhyani